

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 6526 of 2001****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

KALIDAS MAGANLAL JANI & 1 - Respondent(s)

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Appearance :

Mr. I.M. Pandya, AGP, for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 12/12/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award
dated 31st May, 1999 passed by the Labour Court, Surendranagar in

Reference [L.C.S.] No. 231 of 1991 whereby the Labour Court has directed the petitioner to reinstate the respondent in service with 20% back wages.

2. The brief facts of the case are that the respondent herein was working as a Rojanddar with the petitioner since 8th August, 1982. On 15th October, 1986, the services of the respondent came to be terminated. Being aggrieved by the said order, the petitioner raised an industrial dispute, which was ultimately referred to the Labour Court, for adjudication. The Labour Court after considering the case on merits, partly allowed the Reference with the aforesaid directions. Hence, this petition.

3. Heard the learned counsel for the parties and perused the documents placed on record. In view of the decision of this Court in the case of **Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat** reported in 2004 (2) G.L.R.pg.1422, the Irrigation Department of the State can be categorized as an "Industry" under the provision of the Industrial Disputes Act, 1947.

4. In the impugned award, the Labour Court has recorded a

finding of fact that the respondent workman has worked continuously for 240 days in a years. I am in complete agreement with the reasonings given by and the findings arrived at by the Labour Court while granting reinstatement in service to the respondent.

5. So far as the question of back wages is concerned, the Labour Court has not given any cogent reasons for awarding back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J.pg.176 a workman has no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. Similar principle has been laid down by the Apex Court in the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C.,pg. 137 [2005 /(5) S.C.C.,pg.591], wherein it has been held that an order for payment of back wages should not be passed in a mechanical manner but a host of factors are to be taken into consideration before passing any such order.

6. It would also be relevant to refer to a decision of the Apex Court in the case of A.P. State Road Transport & Ors., v. Abdul Kareem

reported in (2005) 6 S.C.C. pg.36, wherein it has been held that a workman is not entitled to any consequential relief on reinstatement as a matter of course unless specifically directed by forum granting reinstatement. In above view of the matter, I am of the opinion that the respondent cannot be said to be entitled for back wages.

7. In the result, the petition is partly allowed. The impugned award of the Labour Court is modified to the extent that the direction qua reinstatement in service is confirmed and the direction qua granting 20% back wages is quashed and set aside. The respondent is directed to implement the aforesaid order within a period of six weeks from today. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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